

Appendices

Appendix 1 - Timeline

Appendix 2 – Courts and Public Law Libraries

Appendix 3 – Citing Your Sources of Information

Appendix 4 – Glossary (Definition of Terms)

Appendix 5 – Bibliography

Appendix 6 – Preparing an Appendix

Appendix 7 – Summary Judgment and Demurrer

TIMELINE

This timeline should be used as a guide to assist in calculating the proper time for meeting appellate court filing deadlines. The timeline is only a guide; if at any time you are unsure about approaching deadlines or scheduled court actions, call the Court of Appeal at 213-830-7000 or check your case at the Court's website at appellatecases.courtinfo.ca.gov/search.

Filed in Superior court

- Judgment or Appealable Order, Notice of Appeal, filing fee (\$655) and clerk's deposit (\$100) due when counting from date the judgment/order was file stamped or the notice of entry served:

If notice of entry served → 60 calendar days after service or mailing

If notice of entry not served → 180 calendar days after judgment entered.

Time may be extended up to 180 days by a timely motion to vacate, motion for new trial, motion for judgment notwithstanding the verdict, or motion for reconsideration

- After the filing of the *Notice of Appeal* (can be filed at the same time as the *Notice of Appeal*):

Designation of the record and deposit of money → 10 calendar days after the *Notice of Appeal* is filed.

Respondent's designation of additional items → 10 days after appellant's designation

Motion to contest Rule 5.1 election → 10 calendar days after election filed

Filed in the Court of Appeal

Civil Case Information Statement → 10 calendar days after the clerk mails you a notice that the form must be filed.

- After getting notice that record is filed with the Court of Appeal:

Appellant's Opening Brief → 30 calendar days OR 70 days after the filing of a rule 5.1 election, if the appeal proceeds without a reporter's transcript.

Respondent's Brief → 30 calendar days after Appellant's Opening Brief is filed.

Appellant's Reply Brief → 20 calendar days after Respondent's Brief is filed.

Petition for Rehearing → 15 calendar days after the filing of the opinion, the order of publication or the modification of opinion if it changes the judgment.

Answer to Petition for Rehearing → 8 calendar days after the filing of the Petition for Rehearing.

COURTS AND PUBLIC LAW LIBRARIES

COURTS

Superior Courts in the Second District

You must file all *Notices of Appeal* and Designations of the Record accompanied by appropriate *Proofs of Service* at any filing window at any branch in the county in which your superior court case occurred. It is highly recommended that you file these documents at the appeals section of the superior court in your county. Those locations are as follows.

Los Angeles County:

Clerk, Appeals Section
Los Angeles Superior Court
Stanley Mosk Courthouse
111 North Hill St., Room #111
Los Angeles, CA 90013
(213) 974-5238

Ventura County:

Clerk, Appeals Division
Ventura Superior Court
800 S. Victoria Ave., Room #210 (Window 13)
(If mailing filing, P.O. Box 6489)
Venura, CA 93006
(805) 654-2269

San Luis Obispo County:

Clerk, Appeals Division
1050 Monterey St., Room #220
San Luis Obispo, CA 93408
(805) 781-5677

Santa Barbara County:

1100 Anacapa, 2nd Floor
Santa Barbara 93010
(805) 568-2220

California Court of Appeal

For filing motions and briefs in the Court of Appeal, the address is:

Clerk, Court of Appeal
300 South Spring St., Room # 2217
Los Angeles, CA 90013

California Supreme Court

For filing copies of briefs and petitions for review in the California Supreme Court the address is:

California Supreme Court
Second Floor
300 South Spring Street
Los Angeles, CA 90013
(213) 830-7570

OR California Supreme Court
350 McAllister Street
San Francisco, CA 94102
(415) 865-7000

PUBLIC LAW LIBRARIES

All four counties in Division Two have County public law libraries. Some, like Los Angeles County, have multiple branch locations. Below is a listing of the main locations for the law libraries, along with their websites from which other locations can be identified. Many of the libraries' websites contain links to other helpful legal research sites.

Los Angeles County:

301 West First Street
Los Angeles, CA 90012
(213) 629-3531
<http://lalaw.lib.ca.us/>

Ventura County:

800 S. Victoria Ave.
Ventura, CA. 93009
(805) 642-8982
<http://www.infopeople.org/ventura/vclaw/>

San Luis Obispo County:

County Government Center, Room 125

1050 Montgomery St.

San Luis Obispo, CA 93405

(805) 781-5855

<http://www.rain.org/~slolawli/>

Santa Barbara County:

Santa Barbara County Courthouse

1100 Anacapa

Santa Barbara, California 93101

(805) 568-2296

<http://www.countylawlibrary.org/info.htm>

CITING YOUR SOURCES OF INFORMATION

Every statement of law in your brief must be supported by a citation to a case, statute, rule, constitutional provision, treatise, law review article or other source that supports the statement you are making. The citation is usually contained in parentheses at the end of the sentence. (See [Sample Form K](#).) For example, your brief might state: "The elements of a cause of action for negligence are: duty, breach of duty, legal cause, and damages. (*Friedman v. Merck & Co.* (2003) 107 Cal.App.4th 454, 463.)"

The California Style Manual is the manual followed by California courts for citation form. You can find the California Style Manual in any law library. However, if you follow the general guidelines in this Appendix, you will probably not need to consult the California Style Manual. The court is mainly interested in finding out where you got the information you have included in the brief. Your brief will be accepted as long as the citations are clear enough to identify your reference sources.

Here are some simple guidelines for proper citation form:

CASES:

You should include the name of the case you are citing, the year it was decided, the volume and page number of the official reporter where the case appears, and the page number in the case that specifically supports the proposition of law you are stating. For example, a California Supreme Court case would be cited as follows: *Intel Corp. v. Hamidi* (2003) 30 Cal.4th 1342, 1351. The "30 Cal.4th" refers to volume 30 of the fourth series of Official California Reports, which is the official reporter for California Supreme Court opinions. The "1342" refers to the page in volume 30 where the case starts. The "1351" is the page number of the case you are referring to in your brief. Similarly, a California Court of Appeal case would be cited as follows: *Albertson's, Inc. v. Young* (2003) 107 Cal.App.4th 106, 113. The "107 Cal.App.4th" refers to volume 107 of the fourth series of Official California Appellate Reports, which is the official reporter for California Court of Appeal opinions.

Federal court citations follow the same general format. United States Supreme Court cases can be found in three separate reporters: the United States Supreme Court Reporter (abbreviated U.S.), the Supreme Court Reporter (abbreviated S.Ct.), or the Lawyer's Edition Reporter (abbreviated L.Ed.). You may cite to any of these reporters. For example: *Montana v.*

United States (1981) 450 U.S. 544, 551. For other federal courts, your citation should identify which federal circuit or district court decided the case. Federal circuit court cases are cited as follows: *Clicks Billiards, Inc. v. Sixshooters, Inc.* (9th Cir. 2001) 251 F.3d 1252, 1257. "9th Cir." indicates that the case was decided by the Ninth Circuit Court of Appeals, and "F.3d" refers to the third series of the Federal Reporter. Federal district court cases are cited as follows: *Plute v. Roadway Package System, Inc.* (N.D. Cal. 2001) 141 F.Supp.2d 1005, 1010. "N.D.Cal." indicates that the case was decided by the United States District Court for the Northern District of California, and "F.Supp.2d" refers to the second series of the Federal Supplement Reporter.

For cases from other states, you will need to cite to the National Reporter System regional reporter or the state's official reporter. Identify which state court decided the case in your citation. Here is an example: *In re Gatti* (Ore. 2000) 8 P.3d 966, 972-973. "P.3d" refers to the third series of the Pacific regional reporter. Here is another example: *Fischer v. Governor* (N.H. 2000) 749 A.2d 321, 326. "A.2d" refers to the second series of the Atlantic regional reporter.

STATUTES:

For a California statute, give the name of the code and the section number. For example, "Code of Civil Procedure, section 1011" or "Family Code, section 3461." For a federal statute, cite to the United States Code (abbreviated U.S.C.). For example, "28 U.S.C. section 351."

RULES:

For rules, identify the body of rules you are citing and the specific rule number. For example, "Cal. Rules of Professional Conduct, rule 3-500" or "Cal. Rules of Court, rule 17(a)."

CONSTITUTIONS:

For constitutions, identify whether you are referring to California or United States Constitution and refer to the specific constitutional provision you are relying on. For example, "California Constitution, article IX, section 2" or "United States Constitution, Fourteenth Amendment."

TREATISES:

For legal treatises, you should indicate the volume number of the treatise you are citing (if it has more than one volume), the author of the treatise, the title, edition and year, and the section and page number that

supports the proposition of law you are stating. For example, "5 Witkin, Summary of California Law (9th ed. 1988) Torts, § 607, p. 706." This is a citation to volume 5 of a treatise by author Witkin entitled Summary of California Law, and the specific portion of the treatise cited is section 607 of the Torts chapter on page 706.

LAW REVIEWS AND JOURNALS:

For law review or journal articles, you should identify the author, title of the article, year it was printed, name of the law review or journal, volume and page number, and the specific page number of the article you are citing to. For example: Volokh, *The Mechanics of the Slippery Slope* (2003) 116 Harv. L.Rev. 1026, 1033. The abbreviation "Harv. L.Rev." stands for Harvard Law Review, and this article appears in volume 116 of the Harvard Law Review at page 1026. If you do not know the proper abbreviation, you may spell out the entire journal name in your citation.

OTHER SOURCES:

If you are citing any other source, do your best to identify the source as accurately as possible, so that someone reading your brief could easily find it and look it up. As a general rule, you should identify the author, title, year, volume,

GLOSSARY (DEFINITIONS OF TERMS)

(Definitions of Terms)

appeal A review by the Court of Appeal of what happened in the superior court to determine whether any mistakes of law occurred and, if so, whether the party who filed the appeal is entitled to have the judgment or order of the court below reversed, vacated, remanded, or otherwise changed. If the ruling was by a judge having power to rule on cases involving \$25,000 or less, the appeal is to the appellate division of the superior court; if the ruling was made in the unlimited jurisdiction of the superior court having power to rule on matters involving more than \$25,000, the appeal is to the Court of Appeal. If something is “on appeal,” it means a *Notice of Appeal* has been filed and the case is in the appeal process at the Court of Appeal.

appellant The person filing the *Notice of Appeal*; the person who did not win at the trial or hearing in the superior court (or other agency having power to make rulings).

appellant’s opening brief (abbreviated AOB). The document filed by the appellant that sets out his or her story, the error that occurred and why that error is so important that the rulings of the trial court should be reversed. (See [Sample Form K](#).)

appellant’s reply brief (abbreviated ARB). The document filed in response to the respondent’s brief. It is limited to issues already raised in the appellant’s opening brief (AOB) or added in the respondent’s brief.

appellate court In California there are two levels of appellate court: the Court of Appeal and the Supreme Court. The Court of Appeal is the intermediate appellate court—intermediate between the superior court (trial court) and the Supreme Court. Appeals from the unlimited jurisdiction of the superior court with power to rule in cases involving more than \$25,000 are generally taken to the intermediate appellate court, which must review each and every appeal filed with it. Review of intermediate appellate court decisions is by petition for review in the Supreme Court, the highest state court in California. The Supreme Court selects which cases it will hear—less than 5 percent of petitions filed. (*See, appeal.*)

appendix An “appellant’s appendix” (abbreviated AA) is a document prepared by the appellant in place of the clerk’s transcript, which is prepared by the superior court. It includes the items that would have been designated had a clerk’s transcript been prepared. If respondent and appellant agree to prepare a single appendix together, it is called a “joint appendix” (abbreviated JA). Otherwise the respondent may prepare a “respondent’s appendix” (abbreviated RA) if there are additional documents that the respondent thinks should be included in the appellate record but which are not in the AA.

application. See **motion or application.**

brief A written summary of the relevant facts and procedural history of the case, the points and authorities concerning the law, and the argument of the party. (See [Sample Form K.](#)) A brief presents the issues you want to address and provides argument about why the superior court’s order or judgment should be changed or should be upheld. If your brief does not comply with the rules, it may be returned to you for correction.

California Rules of Court (abbreviated CRC). Rules put out by the Judicial Council, the California Judicial branch’s administrative body, for statewide use. They present the procedural requirements and time limits on handling cases in court. (These rules supplement the Code of Civil Procedure.)

cause of action The facts and legal theory supporting a particular claim in a lawsuit, such as a malpractice or contract cause of action.

citation (often shortened to “cite”). A reference to legal authority (such as a case, statute, or treatise) or a reference to the record (such as the clerk’s or reporter’s transcript).

Civil Case Information Statement A questionnaire that assists the court in determining whether a *Notice of Appeal* is timely and is from an appealable judgment or order. (See [Sample Form J.](#)) The form is filled out by each appellant or cross-appellant and filed with the Court of Appeal within 10 days after the clerk mails you a notice that the form must be filed.

clerk's transcript (abbreviated CT). Includes papers that are designated by the parties and that were filed or lodged with the clerk at the trial, all minutes, all written instructions to the jury (given or refused), and all exhibits (admitted or refused). (CRC rule 5.) The clerk's transcript provides the Court of Appeal with a picture of the procedural history of the case in the superior court.

codes A systematic collection of laws (statutes) dealing with a particular subject passed by the Legislature, for example the Code of Civil Procedure, Penal Code, etc.

counsel An attorney or attorneys representing an individual or business entity in a lawsuit or giving them legal advice.

CRC See California Rules of Court.

cross-appeal Sometimes, when each party in a case wins on some issues but loses on others, both sides may wish to appeal. The first party to file a *Notice of Appeal* becomes the appellant, and the other party becomes the respondent. When the respondent appeals from the same order or judgment, the second appeal is called a cross-appeal, and the party bringing it is called a cross-appellant. The deadline for bringing a cross-appeal is 20 days after the superior court clerk mails notification of the first appeal. (CRC rule 3(e)(1).)

declaration A written statement of facts known to the declarant and sworn to under oath or penalty of perjury. (See [Sample Form M](#).)

default When a party misses a deadline to pay a fee or file papers. The party is told of their default through a Notice of Default sent to the party in the mail. Typically, the Notice of Default allows the party a period of time to remedy the problem (usually 15 days).

defendant The person(s) the suit is being brought against in the Superior court.

demurrer A motion brought by the defendant saying that even if everything in the complaint is considered to be true, it is not sufficient to state a cause of action—that is that anything legally wrong has occurred. See Appendix 2.

discovery The process of finding out facts and developing evidence before trial in order to prove one's case. This occurs at the Superior court. The primary types of discovery are interrogatories, depositions, requests for admission, and requests for production.

discretion The freedom to make decisions within a broad range of reason, so long as they are not arbitrary or capricious.

exhibit A document or object formally presented to the Superior court as evidence. Exhibits can be lodged with the Court of Appeal, but only if they had previously been accepted or denied as evidence at the Superior court.

file-stamped A "file-stamped" document has the court's stamp with the date of filing in the upper right-hand corner making the document an official court document.

findings of fact When there is disagreement about what the facts of a case are, the judge or jury determines what the facts are by making findings of fact. The findings of fact -- for example, that the light was red, not green as the plaintiff alleges -- must be supported by evidence in the record.

frivolous appeal An appeal that is undertaken to harass the respondent or for delay *or* an appeal that is totally without merit.

good cause The reason the applicant should be permitted to do what he is asking to do.

judgment The final ruling of the trial court. Usually this is the end of the case in the trial court. Sometimes if there are many defendants, some of the defendants may get out of the case early, and there may be more than one judgment.

judicial notice Items the court accepts without proof, including well-known and indisputable facts, rules of court, rules of professional conduct, decisional and public statutory law of California, and the definitions of English words and legal expressions.

jurisdiction The authority or the power of the court to act. Generally there are certain things that must be done in order for the court to have jurisdiction. If a court does not have jurisdiction over your case, the case will be dismissed.

motion or application The procedure by which one asks the Court of Appeal to do something or to permit one of the parties to do something. In the appellate court, motions are most commonly used to augment (add to) the record, ask for extensions of time, and take judicial notice. The opposing parties may file an opposition to the motion, which is usually ruled on by a single judge. The motion is held for opposition 10 days from the date of service if personally served, or 15 days if served by mail. Applications are used for more routine matters, most commonly requests for extension of time to file a brief. (CRC ruled 43, 45.5.) However, the Second District does not differentiate between motions and applications.

Notice of Appeal (abbreviated NOA) A notice that must be filed in a timely manner to begin the process of appeal. The notice is filed by the aggrieved party (the person who “lost”) in the Superior court case and expresses that party’s desire to have the Court of Appeal reexamine all or part of the Superior court case for errors in law. (See [Sample Form A.](#))

opinion The final written decision of the Court of Appeal, including the reasons for that decision, the facts on which it is based, and instructions for any further actions.

order A court ruling on a motion or application or other matter.

party One who brings a lawsuit or has a lawsuit brought against him. One who takes part in a legal transaction.

plaintiff The party bringing the lawsuit in the trial court.

points and authorities A document that sets out each legal proposition, issue, or argument (the point) the party wishes to make, supported by citations to cases, statutes, or other sources (the authorities). Points and authorities (or “Ps & As”) accompany motions, giving legal reasons why the motion should be granted or denied. (See [Sample Form L.](#))

Proof of Service (abbreviated POS). When papers are served (see definition of “service” below), the *Proof of Service* is attached to the papers and tells what papers were served, to whom they were sent or delivered, the date of service, and who served the papers. (See [Sample Form C.](#)) If service is in person, the *Proof of Service* also states who actually got the papers and when. Whenever a paper is to be served on a party, the service should be made on the person’s attorney if he or she has one.

pro per, pro se, in propria persona Self-represented.

remittitur A document, issued by the Court of Appeal to the superior court that returns jurisdiction to the superior court after an appeal and shows the final judgment of the Court of Appeal.

reporter’s transcript (abbreviated RT). A transcript of everything that is said in the courtroom while court is in session, which the court reporter takes down and types.

respondent The person responding to the opening brief; the person who won in the trial court.

respondent’s brief (abbreviated RB) A brief filed by the party who “won” in the superior court that responds to the issues raised in the appellant’s opening brief with arguments why the rulings the trial court made were correct or, if they were in error, why the error was harmless.

serve and file All papers filed in the superior court or the Court of Appeal, unless otherwise noted, are to be accompanied by proof of prior service of a copy of the paper on the attorney for each party who is represented by a separate attorney or on the individual person if he or she is self-represented. Whenever the paper is required to be given or served on a party, the service should be made on the party’s attorney if he or she has one.

service The process of providing exact copies of the documents filed in court to the other parties involved in the case. It may be done in person, in which case the notice must be handed to the person himself or to a person designated to receive service, or it may be done by mail. Service must be done by someone over the age of 18 who is not a party to the case. The original signed Proof of Service is attached to the back of the original document being filed and tells who got the notice, what date it was served

and who served it. If service is in person, it will also give the name of the person taking the documents and the time and place of service. The court does not serve papers for you. **Everything filed with the Court of Appeal, unless otherwise noted, must be accompanied by a Proof of Service.** (See [Sample Form C.](#))

standard of review The rules or guidelines used by the Court of Appeal to determine whether the Superior court erred in making a particular ruling. (See Chapter 5)

statutes Laws enacted by the state Legislature or by Congress.

stipulation A written agreement between the parties. (See Chapter 2, footnote 1.)

submit When all of the briefing is completed and oral argument, if requested, has been heard the case is submitted to the court which means it is ready for decision. The next thing that will happen is the issuance of an opinion within 90 days of the last day of the month in which the case was submitted. After the case is submitted the court will not accept any further information or argument on the case.

superior court The trial court. The court of limited jurisdiction handles civil cases seeking \$25,000 or less; the court of unlimited jurisdiction handles all other civil cases. The appellate division of the superior court handles appeals from decisions made in the court of limited jurisdiction.

summary judgment When there is no issue of material fact the applicant may bring a motion for summary judgment on the basis he or she can prevail as a matter of law without the need for a trial.

table of authorities A listing of all of the legal cases, statutes and secondary authority used in the brief with the page on which each was used.

treatise A legal textbook setting out the principles of a given subject, such as a treatise on contracts.

BIBLIOGRAPHY

California Civil Appellate Practice (Cont.Ed.Bar 3rd ed. 1996)

California Civil Writ Practice (Cont.Ed.Bar 3rd ed. 1996)

4-5 Cal.Jur. 3d (1998) Appellate Review

California Rules of Court: Appellate Rules, Rules 1-49.5, primarily 1-29.9; 40-49.5.

California Style Manual (4th ed. 2000).

Code of Civil Procedure, section 904 et seq.

Eisenberg et al., Cal. Practice Guide: Civil Appeals and Writs
(The Rutter Group 2002)

Matthew Bender, Calif. Forms of Pleading and Practice, Vol. 5 "Appeal"

San Diego County Bar Association, Appellate Court Committee, California Appellate Practice Handbook, (7th ed. 2001)

West's California Rules of Court: State, Local Rules of the Second Appellate District and Internal Operating Practices and Procedures of the Second Appellate District.

9 Witkin, Cal. Procedure (4th ed. 1996) Appeal

PREPARING AN APPENDIX

Make copies of the documents that are related to the appeal. You cannot include any documents that were not part of the superior court proceedings. Photocopy on one side only, on recycled paper.

The appendix must include the following items:

- A chronological index of all of the items in the appendix ([Sample Form H](#)).
- An alphabetical index of all of the items in the appendix ([Sample Form I](#)).
- All documents necessary for the consideration of issues in the appeal.
- The judgment or order being appealed and any notice of its entry, any notice of intention to move for a new trial; any motion to vacate the judgment, for judgment notwithstanding the verdict, or for reconsideration and the rulings thereon; and any order on such motion and any notice of its entry.
- The *Notice of Appeal*
- The notice to prepare the clerk's and reporter's transcripts, or the settled statement, or *Notice Designating Record on Appeal* form
- Any notice of election to proceed by an appendix under CRC rule 5.1 and, for a joint appendix, the stipulation designating its contents
- Any stipulation to proceed by agreed statement under CRC rule 6, along with the agreed statement; and any settled statement approved by the court under CRC rule 7.

Arrange the documents in the order in which they were filed in the superior court (chronologically), and number the pages one after the other, beginning with page 1.

Make a chronological index of all documents by listing them in the order filed, with the first page number for each document and, if there is more than one volume, the volume number. ([Sample Form H](#).)

Make an alphabetical index of all the documents by listing them in alphabetical order, with the first page number of each document and, if there is more than one volume, the volume number. ([Sample Form I](#).)

Prepare a cover ([Sample Form G](#)). The cover should state the case title and superior court case number, the Court of Appeal number, the name of each of the participating Superior court judges, the names and addresses of appellate counsel for each party or any self-represented party, the volume number, and the inclusive page numbers (for example, 1-246) of that volume.

The cover should be the appropriate color:

Appellant's Appendix – Green

Respondent's Appendix – Yellow

Appellant's Reply Appendix - Tan

Joint Appendix – Cream(CRC rules 5.1(c), 9(a), (b), (c).)

Put the materials together: cover, chronological index, alphabetical index, and documents in chronological order.

Make the necessary number of copies (one for each party, the original for the court, and one for yourself), and bind the original and each of the copies into transcript (book) form. The appendix should be bound on the left side, in volumes of 300 pages or less. (CRC rules 5.1(c), 9(c)(1).) The appendix may not be bound with the brief.

SUMMARY JUDGMENT AND DEMURRER

Demurrers and summary judgments represent special circumstances that necessitate slightly different procedural requirements throughout the appellate process. The three most important differences occur in determining the appealability of your appeal, identifying the order or judgment from which you can appeal, and in identifying the facts in the process of writing the brief. Those differences are discussed below.

Appealability

Demurrer If a plaintiff files a case in superior court and the facts in the complaint do not state a cause of action (that is, they give no legal basis for the defendant to be held responsible), the defendant may bring a **demurrer** asking that the case be dismissed. If a cause of action has been stated, the superior court overrules the demurrer and the case continues on. If no cause of action has been stated but the court believes there may be more facts that will enable the plaintiff to state a cause of action, the court sustains the demurrer “with leave to amend,” in which case the plaintiff can restate his or her case. If the court believes there is no cause of action, the court sustains the demurrer without leave to amend, and the case is dismissed. This ruling is an order but, by statute, may be appealed. (Code of Civil Procedure, section 581d.) In order for the order to be appealable, the order must say the case is dismissed (for more information, refer back to Chapter 1.) On appeal, the Court of Appeal looks only at the complaint and assumes all of the factual allegations are true in order to rule on whether the complaint states a cause of action. Thus, the Statement of Facts in the opening brief should be based on the facts as alleged in the complaint.

Summary judgment In a **summary judgment**, one party may contend there are no facts that need to be decided, or the parties may agree on what the facts are. Either side (and sometimes both sides) may bring a motion for summary judgment arguing that they are entitled to a judgment in their favor without a trial. Unless the parties agree that there is no genuine dispute about material facts in the case, the court must determine whether there are any such disputed facts. Unlike a demurrer, the court is not limited to the allegations of the complaint, and it will review sworn statements or other evidence submitted by the parties in writing. The court will then decide if there is conflicting evidence in the record as to the material facts. If so, the summary judgment motion should be denied because the evidentiary conflict must be resolved in a trial. If not, the court can grant summary judgment in

favor of either of the parties. For example, if all the evidence shows that the light was green, the court does not need to hold a trial to determine whether the light was red or green.

A trial court's ruling granting summary judgment is an order. A party seeking to appeal the ruling must first get a judgment based on that ruling (again, for more information, refer back to Chapter 1.) In looking at the facts on appeal, the question is exactly the same as the issue before the trial court: Is there a genuine dispute as to material facts that must be resolved at a trial? If there is such a factual dispute, summary judgment should not have been granted, the judgment should be reversed, and the case should go back to the trial court for a trial. Thus, if you are the appealing party, your Statement of Facts should emphasize the evidence in the record that you believe conflicts with the trial court's ruling. With appropriate page number citations to the record, you should point out the evidence which demonstrates there is a factual conflict that must be resolved in a trial. If there are no factual disputes, you should argue that the trial court incorrectly applied the law in granting summary judgment to the opposing side.

Statement of the facts in the brief

Your statement of facts will be different if the case was dismissed without a trial. In such a case, the facts have not yet been established by the trial court. Demurrers and summary judgments are two types of pretrial motions that may cause a case to be dismissed without a full trial. Because cases are commonly dismissed on demurrer or summary judgment, we shall explain a little about how to write the statement of facts when appealing from such a dismissal.

Demurrer If a plaintiff files a case in superior court and the facts in the complaint do not state a cause of action (that is, they give no legal basis for the defendant to be held responsible), the defendant may bring a demurrer asking that the case be dismissed. If a cause of action has been stated, the superior court overrules the demurrer and the case continues on. If no cause of action has been stated but the court believes there may be more facts that will enable the plaintiff to state a cause of action, the court sustains the demurrer "with leave to amend," in which case the plaintiff can restate his or her case. If the court believes there is no cause of action, the court sustains the demurrer without leave to amend, and the case is dismissed. This ruling is an order but, by statute, may be appealed. (Code of Civil Procedure, section 581d.) In order for the order to be appealable, the order must say the case is dismissed (for more information, refer back to

Chapter 1.) On appeal, the Court of Appeal looks only at the complaint and assumes all of the factual allegations are true in order to rule on whether the complaint states a cause of action. Thus, the Statement of Facts in the opening brief should be based on the facts as alleged in the complaint.

Summary judgment In a summary judgment, one party may contend there are no facts that need to be decided, or the parties may agree on what the facts are. Either side (and sometimes both sides) may bring a motion for summary judgment arguing that they are entitled to a judgment in their favor without a trial. Unless the parties agree that there is no genuine dispute about material facts in the case, the court must determine whether there are any such disputed facts. Unlike a demurrer, the court is not limited to the allegations of the complaint, and it will review sworn statements or other evidence submitted by the parties in writing. The court will then decide if there is conflicting evidence in the record as to the material facts. If so, the summary judgment motion should be denied because the evidentiary conflict must be resolved in a trial. If not, the court can grant summary judgment in favor of either of the parties. For example, if all the evidence shows that the light was green, the court does not need to hold a trial to determine whether the light was red or green.

A trial court's ruling granting summary judgment is an order. A party seeking to appeal the ruling must first get a *judgment* based on that ruling (again, for more information, refer back to Chapter 1.) In looking at the facts on appeal, the question is exactly the same as the issue before the trial court: Is there a genuine dispute as to material facts that must be resolved at a trial? If there is such a factual dispute, summary judgment should not have been granted, the judgment should be reversed, and the case should go back to the trial court for a trial. Thus, if you are the appealing party, your Statement of Facts should emphasize the evidence in the record that you believe conflicts with the trial court's ruling. With appropriate page number citations to the record, you should point out the evidence which demonstrates there is a factual conflict that must be resolved in a trial. If there are no factual disputes, you should argue that the trial court incorrectly applied the law in granting summary judgment to the opposing side.